

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

VALLEY BOYS INC. d/b/a
VALLEY BOYS ROOFING,
Assignee,

CASE NO: CI 15-_____

Plaintiff,

vs.

WESTERN IOWA MUTUAL
INSURANCE ASSOCIATION,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Valley Boys Inc. d/b/a Valley Boys Roofing (“Valley Boys”), by its attorneys, The Saathoff Law Group PC, LLO for its Complaint against Defendant, Western Iowa Mutual Insurance Association (“Western Mutual”), states as follows:

PARTIES, JURISDICTION, AND VENUE

1. This is an action for Breach of Contract.
2. The jurisdiction of this Court is invoked pursuant to 28 U.S. Code § 1332.
3. The amount in controversy exceeds \$75,000.
4. Plaintiff, Valley Boys was and is a Nebraska corporation with its principal place of business located at 10547 Bondesson Circle, Omaha, Nebraska 68123.
5. Defendant, Western Mutual is an Iowa corporation with its principal place of business located at 127 Pearl Street, Council Bluffs, Iowa 51503.
6. Venue is proper pursuant to 28 U.S. Code § 1391 because it is the venue in which the cause of action accrued, *i.e.*, the breach of contract.

FACTS COMMON TO ALL COUNTS

7. Western Mutual issued insurance policies (“the Policies”) to the insureds/assignors (“the Insureds”).

8. Valley Boys requested certified copies of the Policies; however, Western Mutual has failed and/or refused to provide the certified Policies to Valley Boys.

9. This action involves the following Insureds and associated claim numbers:

- a. Pat and Vickie Shannon, Claim Number: W1400489; and
- b. Russ Keast, Claim Number: W1400896.

10. The Insureds duly executed Assignments of Insurance Claims with Valley Boys (“Assignments”). A true and accurate copy of the Assignments are attached as group **Exhibit “A.”**

11. As set forth in **Exhibit “A,”** Valley Boys forwarded a copy of the Assignments to Western Mutual.

12. Under Nebraska law, Valley Boys assignments are valid.

13. Under the Policies, Western Mutual agreed to pay for direct physical loss to the insured premises resulting from any peril not otherwise excluded within the Policies.

14. The Insureds sustained direct physical loss due to hailstorm (“the Losses”). Damages resulting from the hailstorms are covered under the Policies.

15. The Policies were in full force and effect at the time of the Losses.

16. The Insureds and/or Valley Boys, as assignee, promptly and properly made claims to Western Mutual for insurance benefits under the Policies and fulfilled all other post-loss duties required of it under the Policies.

17. As assignee, Valley Boys has satisfied all those matters and things properly required of it under the Policies, including substantial compliance with all conditions precedent thereunder, or alternatively, has been excused from performance of the same by virtue of the acts, representations, and/or conduct of Valley Boys.

18. Despite Valley Boys' valid assignment of rights provided to Western Mutual, Western Mutual issued payments to Insureds without including Valley Boys on said funds.

19. Western Mutual's failure to include Valley Boys on any payments issued to Insureds is unlawful.

20. Western Mutual is not entitled to a "set off" of any monies paid to Insureds that were not paid to Valley Boys.

21. Western Mutual's conduct of failing to include Valley Boys on any undisputed funds paid to Insureds constitutes a breach of contract.

22. Western Mutual's failure to pay what is owed constitutes a breach of contract.

COUNT I: BREACH OF CONTRACT

23. Valley Boys reincorporates and restates allegations set forth in paragraphs 1-22 hereinabove by this reference.

24. Pursuant to the Policies, Western Mutual has a contractual obligation to pay the full amount of the Losses, including the costs to repair, restore, and/or replace the damage, less applicable deductibles.

25. Western Mutual breached the Policies by failing to pay Valley Boys all benefits due and owing under the Policies.

26. Western Mutual's failure to pay owed benefits has caused damages to Valley Boys.

WHEREFORE, Plaintiff, Valley Boys Inc. d/b/a Valley Boys Roofing, respectfully requests that the Court enter judgment in favor of Plaintiff, Valley Boys Inc. d/b/a Valley Boys Roofing in the total amount of \$216,865.51, which is likely to increase with discovery and further investigation, as assignees for:

#	Name of Insured	Claim #	Insurer Failed To Pay
1	Pat and Vickie Shannon	W1400489	\$193,424.34
2	Russ Keast	W1400896	\$23,441.17

against Defendant, Western Iowa Mutual Insurance Association, and all general and compensatory damages owed under the Policies, pre-judgment interest and post-judgment interest, fees, costs and reasonable attorneys' fees pursuant to Neb. Rev. Stat. § 44-359, and such other relief as the Court deems appropriate under the circumstances.

DEMAND FOR A JURY TRIAL

Plaintiff demands trial by jury on all issues so triable.

VALLEY BOYS, INC. d/b/a
VALLEY BOYS ROOFING, Plaintiff

By: /s/ Matthew P. Saathoff

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